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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,179	08/14/2001	Jack Holtzman	PA010477	8988
23696	7590	05/20/2004	EXAMINER HARPER, KEVIN C	
Qualcomm Incorporated Patents Department 5775 Morehouse Drive San Diego, CA 92121-1714			ART UNIT 2666	PAPER NUMBER 8

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,179

Applicant(s)

HOLTZMAN ET AL.

Examiner

Kevin C. Harper

Art Unit

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7 and 9-17 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Arguments

Applicant's arguments filed March 8, 2004 have been fully considered but they are not persuasive.

1. Applicant argued that Naim does not disclose a packet delay time related to transmitting packets from a base station to a mobile station. However, the term "dFr" relates to a delay that is used to determine when packets are transmitted (see title and page 2, lines 35-39 and 41-43) from a base station to a mobile station (para. 9; figure 3).

Drawings

2. The drawings are objected to because in item 108, the value $g(d_i)$ should be " $1+k*MAX(0, (d_i - \tau_i))$ " as noted in the specification on the top of page 10 and in claim 8. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: in para. 31 of page 9, "step 106" should be --step 108--; in para. 32 of page 10, "step 108" should be --step 106--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1 and 4-7 and 9-17 are rejected under 35 U.S.C. 102(a) as being anticipated by EP 1 089 500 A2 ("Naim").

4. Regarding claims 1, 4, 6 and 16-17, Naim discloses a wireless communications system having at least one mobile station with pending data at a transmitter (figure 1, item 12; para. 9; page 4, lines 51-52; figure 3). The system is used in a method comprising calculating a packet delay time for a mobile station (para. 13, dFr), comparing the packet delay time to a threshold (para. 13, "a") to determine a packet delay term (note: various values of P_transmit based on the value of dFr relative to "a") for use in a priority function for scheduling transmissions.

5. Regarding claim 5, 7 and 9-15, the value of the threshold "a" changes during system operation depending on the type of data communication used by the stations (page 6, line 24-26).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1 089 500 A2 ("Naim") in view of Kilkki et al. (US 6,411,617).

6. Naim discloses a priority as a packet delay time function when the packet delay time is less than a threshold (page 6, lines 1-10; para. 30). However, Naim does not disclose that the priority as a packet delay time function is an integer. Kilkki discloses several priority levels where each level is an integer (figure 3, step 76; col. 9, lines 30-36). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to make a priority an integer in the invention of Naim in order to simplify the handling and computation of priorities and to simplify the comparison of priorities.

Allowable Subject Matter

7. Claim 3 is allowed.

8. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 703-305-0139. The examiner can normally be reached weekdays from 11:30 AM to 8:00 PM ET.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema S. Rao, can be reached at 703-308-5463. The centralized fax number for the Patent Office is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see pair.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin C. Harper



May 5, 2004

Seema S. Rao
SEEMA S. RAO 5/12/04
SUPERVISORY PATENT EXAMINER
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